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ABSTRACT

Drawing from an extensive literature review, this practicum recommends a written student academic due process procedure for Brookdale Community College (BCC). Introductory material poses the issue of students' rights to specific institutional procedures by which they can challenge academic judgements made by instructors or by collective faculty or administration. Next, the lack of scholarly attention to the issue of academic due process and the need for a model appropriate to community colleges are addressed. Following a discussion of the background and significance of the practicum, a review is presented of the literature on definitions of the terms "due process" and "right"; issues related to student academic due process; and judicial decisions which have direct application to the question. An analysis is then presented of the current policy and procedures of BCC focusing on student cheating, followed by a summary of the major areas of agreement found in the literature on specific due process steps. The policy proposed for BCC is then presented and its implications discussed. The practicum concludes that the following components are essential to due process policies: (1) written, readily available policies; (2) explicit definitions of offenses and penalties; (3) student representation at all formal proceedings; (4) appeals hearing panels composed of faculty and students; and (5) minimum guidelines for hearing panels. (LL)

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BROOKDALE COMMUNITY COLLEGE AND ACCEPTED STANDARDS OF ACADEMIC DUE PROCESS

by

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ABSTRACT

Brookdale Community College
and Accepted Standards of
Academic Due Process.
Ryan, Gordon Jeremiah.

This practicum was conducted because Brookdale Community College, despite a decade of legal precedent, had not established a written student academic due process procedure. To meet this need, the practicum had three major components: (1) a comprehensive review of due process literature and of relevant court cases was conducted; (2) a listing of commonly accepted norms of student academic due process procedures was developed; and (3) a new academic due process procedure was developed for Brookdale.

The practicum procedures included a review of current College policies, interviews with appropriate College officials, a search of College due process records, an exhaustive literature and court case review, the development of due process guidelines, and the writing of a new due process policy for the College.

The literature review included over two dozen relevant court citations and a review of both recent and early due process publications.

The results of the practicum included the finding that the College's current informal and unwritten due process policy was inadequate. The practicum included eight recommendations for written due process procedures, all which were included in a proposed policy for the College. The major procedural recommendations were: (1) Policies should be written; (2) Informal resolution of grievances should be encouraged; (3) Students should be

able to have advocates or counsel assist them; and (4) An appeals process, including an appeals committee should be provided.

INTRODUCTION

The term "student rights" has been taking on an additional meaning for which community colleges may not be prepared. The new meaning has been student academic due process or the right to specific institutional procedures by which a student can challenge academic judgements made by instructors or by collective faculty and administration. According to at least one noted legal scholar, American colleges and universities have been seriously deficient in meeting this student right (Van Alstyne,77).

In the past decade, state and federal courts have consistently reversed their traditional hands off policy in regards to higher education and have thrust themselves into the classroom. According to Seavey (68), the courts have mandated that institutions treat students as adult citizens with the full due process protection of the Fourteenth Amendment to the United States Constitution. It is quite clear that colleges and universities should have provided students with the procedures by which they can appeal grades, degree requirements, and credit hours.

The academic regulations of a college and university have not been immune from outside assault. In recent court cases, according to the editor of The School Law Newsletter(60) the Courts have shown a willingness to hear cases if the plaintiffs have been able to show proof of arbitrariness or capriciousness on the part of the institution. Inasmuch as the Courts are shifting their stance. it would seem to be in the enlightened self-interest of the community colleges to seriously confront the issue of academic due process.

And yet, many higher education institutions have not practiced preventive law. A significant number of institutions either have had seriously

deficient due process policies or, even worse, have had no policies at all. A study of existing due process procedures taken by Ratliff indicated that although a majority of the respondents had procedures, the due process requirements were not adequately met (66).

Many community colleges have been in disarray in regards to due process requirements. Some have had written procedures; some have practiced oral traditions; many have not as yet become aware of the problem. The oral traditions by which many operate have been especially troublesome. The Carnegie Commission on Higher Education went so far as to say "too much has been left to oral tradition. More people need to know what is expected of them" (20, P.35).

The Problem

At present, very little attention has been given to scholarly examination of the issue of student academic due process in post-secondary education. Research done at the college level has been especially scarce. Most educational research focusing on due process has involved study of the K-12 level. Research that has been done on post-secondary institutions has largely focused on the non-academic student rights' procedures relating to discipline cases (66). Post-secondary due process has involved quite different sets of actors and interrelationships than those found in studies relating to K-12 education. To understand the factors and processes influencing the development of academic due process for students at the post-secondary level, it has been necessary to increase our knowledge in the secondary school area. Efforts have been made during the past decade to articulate broad philosophical backing for due process. The experts and the professional associations have produced guidelines but community colleges appear to have been slow to produce effective model due process procedures.

The present status of court cases and policy recommendations by professional associations and other experts has suggested the need for a much higher level of conceptual knowledge of due process application to academic judgment in higher education. Despite the use of a limited methodology, a study such as this may have contributed to the establishment of general propositions and therefore to a model acceptable to many community colleges.

The Practicum

A basic assumption of this practicum was that college staff want to comply with due process requirements and, given the resources such as adequate information and proper guidelines, will be willing to develop correct institutional policies. This practicum, therefore, had the following three purposes.

1. The literature, including court cases, relating to student academic due process procedures, was identified and analized.

2. A listing of commonly accepted norms of student academic due process procedures was developed.

3. Brookdale's current academic due process procedure was analyzed and deemed to be insufficient. A new, more comprehensive policy was recommended.

In addition, several obstacles may have confronted community colleges which chose to react to the seemingly evident need for due process procedures. First, faculty suspicion that such procedures violate faculty academic freedom. Second, concern with the cost of instituting and operating such procedures. Third, confusion as to what kinds of academic decisions are necessary for an appeals policy to stand the test of due process. Fourth, and most importantly, a lack of knowledge of the background of the issue and the

pressing need for compliance with due process. This study may have contributed to the elimination of each of the five obstacles at Brookdale.

BACKGROUND AND SIGNIFICANCE

Importance of the Practicum

In general this study may have made a contribution to the development of a body of literature on post-secondary student academic due process, especially among community college educators. Scholarly attention has focused on non-academic due process; attention to the academic area has been minimal. An in-depth study such as this practicum may have illuminated the dynamics of the development of the process and may have represented a significant contribution toward the development of a theoretical framework for examining existing due process procedures and creating new policies.

In an era of increasing student contentiousness, consumerism, and court activism, it is likely that many policy makers have needed to develop or modify due process procedures on their campuses. For both policy makers and others attempting to shape due process policy at community colleges, this study has provided a basis for a better understanding of due process implications in higher education. This practicum may have been of practical interest to faculty and administrators who seek to understand the due process applications to academic judgments because it has enabled them to make better decisions in developing their own policies. More specifically, this practicum was used as a basis for the analysis of Brookdale's commitment to academic due process for its students. The proposed new procedure may become a focal point for the debate on establishing a formal,written academic due process standard at the College.

The Societal Factors Affecting Education Seminar

This practicum because of its twin foci on due process issues and institutional procedures could have been related to either the Governance and Management or the Politics, Law and Economics of Higher Education seminar. Upon reflection, however, the most appropriate seminar was thought to be Societal Factors Affecting Education.

In the Societal seminar the student explores "forces that affect life-long education" including "social trends and their impact on education." The increasing reliance on due process by colleges has been a societal trend of recent times. In fact, the legal battle of campus life has been but a mirror image of the phenomenal growth of the litigious nature of the entire society.

Review of the Literature

There is a significant amount of literature which has dealt directly with student academic due process. There has been extensive research on student academic freedom and judicial insistance on due process in higher education. Additionally, legal scholars and professional associations have uniformly urged colleges and universities to adopt academic due process procedures. Not surprisingly, there has been an impressive number of relevant court cases. A substantial amount of work has been published on academic freedom, much of which had addressed the issue of whether or not it is possessed by students. Some of the literature reviewed herein seeks to define terms such as "rights" and "due process."

The literature review focused on three primary areas which were deemed to be both relevant and appropriate to the practicum:

1. Scholarly attention to the definition of the terms "due process" and "right."
2. Scholarly publications which have commented on the issue of student academic due process.
3. Judicial decisions which have directly related to the issue of student academic due process.

Definitions of due process have varied but embodied in all of them is the concept of "fair plan." The Fourteenth Amendment to the United States Constitution, from which all the debate is generated, states that "no person shall be deprived of life, liberty, or property without due process of law." (76)

Frankel has written:

> The extension of due process to the relations of individual citizens with the private organizations to which they belong is one of the major characteristics of the contemporary movement of law in liberal societies.(37, p. 243)

Joughin, a frequent contributor to literature on academic freedom, has said that: "Due process . . . should provide safeguards generally similar to those afforded due process in legal proceedings." (50, p. 6)

Levine (55), author of handbooks on rights of students, has noted that the courts are consistent in requiring all public agencies (which would include public colleges) to treat citizens fairly. Byse (17), Van Alstyne (79), Tramuttola (75) and Brubacher (15) have written that the courts are sensitive to procedural regularity and will generally require only the barest semblance of procedural due process.

Tice (74), in a monograph for the American Association of Higher Education, defined a right as follows:

> A "right" in a meaning closely related to legal use is a valid claim on others that controls the liberty either to act or not to act, to be treated or not to be treated in some particular way, given the requisite ability and opportunity. (74, p. 19)

The case law and the scholarly opinions which support the concept of student academic due process are impressive in number. Attorneys with expertise in educational law are nearly unanimous in recommending that colleges and universities take a serious look at their due process procedures.

Long before some of the more significant court cases were tried, higher education associations were encouraging voluntary compliance with due process requirements. In 1967, the American Association of University Professors (2) and other national organizations drafted the "Joint Statement on Rights and Freedoms of Students." Part of that statement was that "Students should have protection through orderly procedures against prejudice or capricious academic evaluation." The American Bar Association (ABA) Law Student Division Committee on Student Rights and Responsibilities (3, 4) issued a statement in 1970 which stated "academic evaluation of student performance should be neither prejudicial nor capricious." (4, p.221). The Carnegie Commission (20), in the publication Dissent and Disruption, advocated the establishment of "effective judicial procedures" on the campuses of the United States. (20, p.2).

The AAUP (2) has concluded, in a 1970 statement, that students are entitled to even-handed treatment. Evaluation and awarding of credit must be based on academic performance professionally judged. The AAUP recommendation has received support from Bolmeier (12) who has cautioned that grades should only be evaluation and should not be used as tools for punishment for behavior deemed inappropriate. Goldman (40) has written that public universities must afford students constitutional liberties.

Students have academic freedoms, as the Joint Statement on Rights and Freedoms of Students drafted and approved by the AAUP, National Student Association, Association of American Colleges, National Association of Student Personnel Administrators, and the National Association of Women Deans and Counselors (2) indicated. The document was a minimum listing of the standards students may expect from their institutions and teachers. The statement covered the freedom of expression, press, due process, political association, and the freedoms of a citizen. It also protected students from improper evaluations and disclosure of records. Young and Gehring (84) have also stated emphatically that students are entitled to such rights.

Hook (47), although no friend of the radical college student, has written that students have certain rights in regards to the university. He claimed that the rights are based entirely on the professor's freedom to teach. He enumerated student freedoms as the freedom to attend/not attend school, make curricular choices, and challenge and dissent in the classroom. Hook took great pains to show how these commonly accepted aspects of higher education are really freedoms and how today's students enjoy more freedom than the students of any other time. Chambers (22) has agreed that student due process procedures are not a threat to faculty rights.

Kaplin (51) has written that the courts have been indifferent to the evaluation of student performance but have been interested in the existence of fair appeal procedures. Hollander (45) has agreed, indicating that courts often look for the fair application of written grading and appeal procedures. Mills (61) has stated that the mere existence of written procedures will most often keep colleges out of court.

Young and Gehring (84) have written that courts have repeatedly stated that they are not qualified to pass judgement on a student's attainment of academic competence. They have indicated that they will intervene if discriminatory grading or capricious evaluation occurs.

Noted experts and scholars have joined the respected societies in arguing for campuses to establish due process procedures. Britt has argued that students have a right to "unhampered pursuit of truth." (13, p. 2). Byse (17) stated that campuses should willingly adhere to due process to ensure "fair play." Byse has been joined by El-Khawas who has written that a student's "rights to adequate channels of redress if problems arise . . . is a fundamental principles of fair business practice . . ." (33, p. 170).

Moye (62), commenting on the advantages of guidelines, stated that the real advantages are the deterrent effect on arbitrary and capricious behavior by faculty members and the sensitizing of faculty and students to common sense standards.

The American Civil Liberties Union has issued the following statement: "The student's freedom to learn is a compliment of the faculty member's freedom to teach. An Academic community dedicated to its ideals will safeguard the one as vigorously as it does the other." (21, p. 169).

The ACLU (5) has further stated that students are entitled to formal procedures in order to prevent miscarriages of justice.

Blackwell (8) has written that students have a right to due process. Brubacher (15) has stated that another aspect of due process is protection of the individual against unreasonable and arbitrary treatment by university officials. The President of the University of Michigan (36), has stated that

as colleges have looked at their disciplinary procedures, it has become quite clear that they have not really followed the dictates of due process. Frankel (37) has written that legal issues aside, college students should have the right to due process. He further stated that regulation should be widely known and not subject to arbitrary interpretation or unmeasured sanctions.

Several authors have cited several reasons for colleges lagging in their delivery of due process. One commonly cited reason is the fear of red tape. The critics foresee huge bureaucracies turning out reams of transcripts. This prediction is countered by a comment by Byse (17), "due process is not a legal octopus with tentacles of inflexibility, obtuseness, conflict, and delay." (17, P. 170). It is, he states, fair play. Yet the debate goes on. Legal scholar Van Alstyne has attempted to allay fears of due process: "the degree of protection to which a student is entitled in the process is in direct proportion to the harm which could result to him." (79, P.370).

One legal expert has indicated that American colleges and universities are simply ignorant of federal law (Dennis, 28). Two surveys have indicated that this may be the case but that some changes are beginning to take place. A survey of student affairs officials revealed that 69% of the sample believed that capriciousness in grading on the part of faculty would be the next big student rights issue which institutions were largely unprepared to handle (Jackson, 49).

El-Khawas (32) has stated that vastly increased complaints and lawsuits indicate that students are experiencing problems that are not being resolved satisfactorily at the institutional level. She blames the lack of response

on the movement to mass education and the corresponding problems in effective communications. El-Khawas has been seconded by Hook (48), an activist defender of academic freedom, who has stated that it is a peculiar deficiency of colleges and universities that due process is not a standard procedure.

In fact, it is only recently, that the Courts have been willing to enter the arena of academic decision making. Even now, they take their step cautiously and with great reluctance. Blackwell (8) has stated that Courts would prefer not to get involved, but Chambers (22) has countered, maintaining that "A Court will not substitute its judgement for faculty--unless a student can prove malice or caprice, unfairness, or arbitrariness." (22, p 31). El-Khawas (33) has written that the student consumer movement in higher education has directed new attention to the need for fair play in the procedural or business aspects of the institutions' relationships with students. Holmes (46) has noted that the Courts have asked institutions to define and/or list examples of misconduct. Mancuso (59) has written that the Courts are granting more extensive constitutional rights to students in public colleges. Wright (83), has written that the Courts are expert in applying the first amendment and the due process clause, but the persons on campus are the experts in deciding the academic value of a piece of work.

Some authors see gloom and doom for academic freedom in due process. Bickel (7) has written that the abandonment of faculty control, or any part of it, over academic standards is the abandonment of the ends of the university. Canavan (19) has said that students do not have due process rights. Such rights would, according to Canavan, bind the university up in red tape.

Frank Kemerer (52), a professor of law and education at North Texas State University, has written that the opposite is the current trend. He contends that Courts do not hesitate to intervene if the student can show that the decision to dismiss him/her was made arbitrarily. Blumer (11) has commented on the increasing involvement of the Courts in academic policy.

James Perkins (65), former president of Cornell, has rallied against all Court activity in higher education by saying that judicial interference not only threatens quality and instructional autonomy but also costs too much. Lippe (56) has written that such traditional arguments as in loco parentis and matriculation as a privilege have also been used. Van de Haag (80) has argued that although students benefit from academic freedom of the faculty, they do not themselves have academic freedom. Farer (35) has written that the "quiet chat with the dean" will be jettisoned for formalized hearings.

Judges have been particularly eloquent, in their written opinions, regarding student academic due process. A U.S. District Judge in Missouri, in a 1955 decision, wrote:

> It is true that courts will ordinarily defer to the broad discretion vested in a public school and will merely review an educational institution's evaluation of academic performance of its students.
>
> Not withstanding this customary "hands off" policy, judicial intervention in school affairs regularly occurs when a state educational institution acts to deprive an individual of a significant interest either liberty or property
>
> It is well established that when deprivation occurs, the procedural safeguards embodied in the Fourteenth Amendment are called into play, and courts will not hesitate to require that the affected individual be awarded such protection. (Holmes, 46, p. 79).

The United States District Court, Western District of Missouri, has handed down an opinion which included the following statement:

> There have been, and no doubt in the future there will be, instances of erroneous and unwise misuse of power by those invested with powers of management and teaching in the academic community, as in the case of all human fallible institutions. (77, p.255).

In Keyes vs. Sawyer (53), a Federal District Court said that the federal judiciary should not adjudicate the soundness of a professors's grading system, and make a factual determination of the fairness of the individual grade.

The procedural steps which should be contained in a student academic due process policy have become evident in this literature review. National associations such as the American Bar Association and the American Civil Liberties Association have agreed on a series of steps. The Associations have been joined in their consensus by Scholars such as Byse (17), Chambers (22), Farer (35), Levine (55), Moye (62), Nussbaum (64), and deBruin (25). At least three major universities, Michigan State, Pittsburgh and California--have adopted policies, segments of which are widely copied.

The university policies all contain specific statements about the role of the faculty. The Michigan State document (23) has indicated that course objectives and grading methods must be clearly stated. The Pittsburgh document (62) went further.

> All academic evaluations should be based upon good faith and professional judgement, in accordance with applicable standard factors such as race, color, religion, sex, national origin, political affiliation and social activities outside the classroom that are unrelated and may not be considered in matters of academic evaluation, academic assignments, or classroom procedures, nor shall reasoned views expressed by students during the course of study adversely prejudice any student. (62, pp. 194-195)

The University of California policy (78) states that teachers should not evaluate and grade students with prejudice, favoritism or caprice. It goes further and states that faculty must meet classes and office hours, introduce only relevant material and not deny recognition of student work.

The second part of the review of the literature, a look at relevant court cases,yielded more than two dozen citations. As far back as the 1950's the courts began to make rulings regarding academic due process for students. The first case reviewed, Bluett vs. Illinois (10), found the Court denying due process to an expelled student. This case produced the often quoted article, mentioned earlier in this practicum, by Seavey. Four years after Bluett, a Federal District Court held that students are entitled to certain due process procedures before expulsion. The case, Dixon vs. Alabama State Board of Education (29), began the trend towards granting students due process rights. Two more recent cases have been evidence of the fact that the principle is still alive. The case In re Press emphasized that the Court is bound, upon reviewing an appeal from a student to ask a college to prove that due process procedures do exist and have been used. In Goss vs. Lopez (41) the Court specified the need for colleges to afford students due process by specific notices and the opportunity for defense.

The Courts have consistently refused to substitute their judgements for the decisions of faculty, preferring instead to ask colleges to review their decisions if due process has appeared to have been violated. In Connelly vs. University of Vermont (24) the Court demanded that the students prove arbitrariness. In Keyes vs. Sawyer (53), Amatora vs. Crager (44),

Knight vs. State Board of Education (54) and Hill vs. Indiana University (44) the Courts all held that the Court can't make academic decisions, even if evidence of capriciousness and arbitrariness exists. All four cases found the Courts carefully examining the due process procedures and in two cases asking the colleges to review their decisions. In Schwarts vs. Bank Street College of Education (72) the Court discouraged student appeals where students had not yet exhausted collegiate internal procedures.

The specific steps involved in due process have been pointed out in two cases, Esteban vs. Central Missouri State College (34) and Buttney vs. Smiley (16). The Courts held that written charges, adequate notice of hearing, written records, availability of advocates, the use of evidence, etc. were necessary aspects of a due process procedure. The Courts also spoke of adequate notice, preparation time, orderly hearing and impartial decision making regarding appeal hearings.

One area of the legal struggle over academic due process which has seen quite a bit of activity has been degree requirements. The City University lost a case, Block vs. Board of Higher Education (9), in 1966 based on the Catalog as a contract principle. Several other cases have followed the principle. An upstate New York community college lost a case, Healy vs. Larsson (43), when the Court found that the student had met the degree requirements as stated by the college. Similar decisions were made in De Marco vs. University of Health Sciences (27), and Lyons vs. Salve Regina College (57). Two cases, Shuffer vs. Trustees of California State University and College (70) and Tanner vs. Board of Trustees of University of Illinois (73), involved the Courts denying the right of colleges to add special additional degree requirements.

Two rather specialized areas of due process concern were addressed by four cases.

Cheating, long a difficult act to define and for which penalties vary significatly across the country, was the subject of McDonald vs. Board of Trustees of the University of Illinois (58). The Court found that dismissal is allowed after notice and hearing. In another cheating case, Roberts vs. Knowlton (68), the Court heid that dismissal is not "cruel and unusual" punishment for cheating. Grades may not be used as "punishment" for non-academic behavior were the identical findings in Wemuth vss. Bernstein (81) and Dorsey vs. Bale (31).

Dismissal as a result of academic failure has been an issue which has resulted in a great amount of legal activity. Earliest cases, Militana vs. University of Miami (60) and Mustill vs. Rose (63) involved Courts holding that students dismissed on the basis of poor performance were not entitled to due process procedures.

Students who are suspended for failure to make academic progress are not entitled to a hearing was the ruling in the Federal Court case, Greenhil vs. Bailey (42). The decision was subsequently upheld in Gaspar vs. Brutan (39).

Are hearings required for academic dismissal based on unsatisfactory performance in clinical settings?

In Board of Curators of the University of Missouri vs. Horowitz (48), a medical student had been informed of faculty dissatisfaction with her clinical performance and warned that she would not be permitted to graduate unless her work was judged satisfactory by each of seven physicians.

Thereafter, five of the physicians' reports were negative and she was disenrolled.

However, in regards to dismissal, two recent decisions, one by the Supreme Court of the United States and the other by the New York Court of Appeals have settled questions. Both cases involved the contention that a student could not be dismissed on academic grounds without a prior hearing in which the adverse judgement of the faculty could be challenged.

The decisions deny the claims, holding that due process of law does not require a hearing before a student may be dismissed on academic grounds. The Supreme Court held that, assuming the student had any procedural due process rights under the circumstances, the procedures utilized by the school satisfied the Due Process Clause of the Fourteenth Amendment.

The New York Court of Appeals decision Sofair vs. State University of New York, Upstate Medical Center College of Medicine (71), also involved an academic dismissal of a medical student. The Court of Appeals denied the student's procedural due process claim. As in Horowits, the Court indicated that the student had previously been informed of the School's dissatisfaction with his progress, and the dismissal was for academic (as opposed to disciplinary) cause. The Court added, however, that if a student argued that the dismissal had been made in bad faith or that the determination of academic deficiency had been a mere pretext for a dismissal based upon other unstated grounds, a court might properly order a hearing on those limited issues.

PROCEDURES

This practicum was conducted by implementing the following procedures as proposed in the Practicum Proposal.

1. An analysis of the current policy and procedures of Brookdale Community College regarding student academic due process was conducted. College publications were consulted and an appropriate College officials (Institute Deans, Director of Student Life and Dean for Student Development) were interviewed. Relevant College records were reviewed.

2. An exhaustive literature review was conducted in an attempt to determine commonly accepted norms for student academic due process procedures. The ERIC system and several legal rights handbooks were consulted to develop a potential bibliography. A set of requirements for appropriate student academic due process procedures was then developed.

3. When the above mentioned set of requirements was applied to procedures at Brookdale, the College's current process was found to be insufficient. Consequently, a new student academic due process policy was developed and shared with the President's Cabinet and the College Senate.

RESULTS

The Brookdale Procedure

Brookdale's institutional response to students who have wished to appeal academic decisions, has been varied. For students who have been accused of cheating, the policy and procedures have been clear. The College has had a regulation, entitled "Student Conduct Code," since 1969 (Appendix A). This code prohibits "cheating or plagiarism in connection with an academic program (14, p. 2). Students who have been accused of cheating are referred to the director of student life who may at his discretion, impose a verbal or written reprimand in addition to whatever action taken previously by the instructor making the cheating claim. In practice, most cheating cases have been referred to a Student Conduct Committee comprised of three students

and two College staff. The committee meets with the student and his/her accusers. The committee recommends whatever action it deems appropriate to the Director of Student Life. The director then notifies the accused student of the committee's recommendation within 24 hours.

The student may appeal the recommendation of the Student Conduct Committee to the Vice President for Educational Services. The Vice President may affirm the recommendation of the committee or convene another appeal committee, composed of three different students and two different staff members. This committee meets with all appropriate individuals involved in the appeal and makes a recommendation to the Vice President. The Vice President notifies the student of the decision of the committee within 24 hours. All cases may be further appealed to the President. At each step of the process detailed above, the student is entitled to counsel and the right to cross-examine witnesses, provide witnesses on his/her behalf and have access to information provided against him/her.

The Director of Student Life has stated that there are typically five cheating cases heard by the Student Conduct Committee each year (26). The typical sentence is upholding the instructor's decision to give no credit in the course. The only exceptions to this are repeats, who are typically suspended. He has no idea how many cases resolved at the instructor level. The Institute Deans (Badgley (6), Donahue (3), and Frey (38)) have echoed his belief, that no cheating cases were resolved at the instructor level. Each acknowledged that when cheating occurs, instructors have assumed that they can do whatever they feel is appropriate.

The clarity of the student's rights in a cheating case have not mirrored in the case of grade appeals. The College has had no written policy or procedures. No data has been collected regarding grade appeals. The Director of Student Life and the Institute Deans all agreed that the usual informal process has been for the grieving student to first talk to the instructor and, if the grade issue remained unresolved, to appeal to the Dean. The Dean each indicated that they speak to two or three students each year. They have never reversed an instructor's decision but have, infrequently, encouraged instructors to reassess their decisions. If students have chosen to further appeal to the Vice President, no records of such actions have been reported.

Commonly Accepted Due Process Procedures

The specific due process steps in which association, Scholars, and major universities have appeared to be in agreement are as follows:

1. College policies on student academic grievances should be published and widely circulated. Such policies should include specific procedural steps as well as specific definitions of common academic transgressions such as cheating and plagiarism.
2. Students are entitled to written notice of any academic decisions which adversely impacts their status at an institution, such as dismissal or failure to graduate. At the time of notice, students should be advised of their right to grieve. Such notice should be adequately in advance to allow appeal.

3. If a student wishes to grieve a decision, process guidelines must be readily available and clearly stated. It should be published in an easily obtainable college publication.
4. A student should be encouraged, as a first step, to discuss his situation informally with the relevant instructor. If satisfaction is not achieved, the student should discuss, again informally, his case with the instructor's supervisor, usually a department chairperson. The next steps may include formal or informal hearings with deans, and/or presidents.
5. During all of the above, the student is entitled to representation, although not necessarily legal counsel. He may be accompanied by parents, guardian, friend, etc.
6. At some point in the grievance process, usually prior to a presidential hearing, the student should be able to take his case to an appeals Committee. The Committee will preferably be elected and will consist of students and faculty. Under no circumstances should it have on it individuals previously involved in the grievance or potentially involved at other steps.
7. When a student takes a grievance to an Appeals Committee he should have the following rights:
   a. Adequate time to prepare his case.
   b. The ability to cross examine witnesses.
   c. The ability to bring witnesses.
   d. A complete transcript of the proceedings.

e. The decision based only on relevant evidence.

f. The hearing may be private or public, at the student's discretion.

g. Representation by person(s) of his choosing.

8. The judgement of Appeals Committees is ordinarily advisory to a legal constituted authority, such as College president or Board of Trustees.

It seems to be generally believed that if the above procedures are followed, academic decisions will easily withstand tests in court, if for no other reason than due process was utilized.

A Proposal for a New Student Academic Appeal Procedure

Brookdale's policy and procedures regarding cheating as specified in the Student Conduct Code (14) were found to be adequate when compared to the commonly accepted norms. This was not the case when the norms were applied to Brookdale's informal procedure regarding grade appeals. The informal process was found to be totally inadequate. None of the necessary due process requirements were found to be present. Consequently, a new student academic appeals policy and procedure has been proposed. The policy has made use of the already existing Student Conduct Committee but renames it "Student Conduct and Appeals Committee." Current appeal procedures have been expanded and clarified. The Vice President has been made the final arbiter of all academic appeals.

The proposed policy follows:

PROPOSED STUDENT ACADEMIC APPEALS PROCEDURE

Preamble

Brookdale Community College's Due Process Procedure is premised on the following words excerpted from the Joint Statement on Rights and Freedoms of Students issued in 1968.

> "The professor in the classroom and in conference should encourage free discussion, inquiry, and expression. Student performance should

be evaluated solely on an academic basis, not on opinions or conduct in matters unrelated to academic standards.

A. Protection of freedom of expression

Students should be free to take reasoned exception to the data or views offered in any course of study and to reserve judgment about matters of opinion, but they are responsible for learning the content of any course of study for which they are enrolled.

B. Protection against improper academic evaluation

Students should have protection through orderly procedures against prejudiced or capricious academic evaluation. At the same time, they are responsible for maintaining standards of academic performance established for each course in which they are enrolled.

C. Protection against improper disclosure

Information about student views, beliefs, and political associations which professors acquire in the course of their work as instructors, advisors, and counselors should be considered confidential. Protection against improper disclosure is a serious professional obligation. Judgments of ability and character may be provided under appropriate circumstances, normally with the knowledge or consent of the student."

To ensure that these rights and freedoms are adequately protected in consonance with the rights and freedoms of the other members of the academic community, Brookdale Community College has established a policy concerning academic due process which shall be published in the catalog, student handbook and other appropriate college publications. The following procedure applies in such instances where a student feels that his or her rights and/or freedoms have been impinged upon.

Introduction

A student may request Academic Due Process in such instances where the student perceives an inequity concerning his or her academic standing or where his or her academic rights and/or freedoms have been violated or where the academic regulations of the college have been inappropriately interpreted and/or applied.

The burden of proof needed to substantiate the existence of an academic grievance shall rest with the student. Therefore, the student must demonstrate:

(a) the presence of a wrong or loss;
(b) that the specific alleged incident caused damage;
(c) that there is a remedy available to right the wrong.

Instances of the above may include, but not necessarily be limited to situations where students feel they were inappropriately restricted in their expression in the classroom or received an inappropriate grade in a particular course. They do not include questions concerning admission to a program or a specific course section.

In keeping with the intent and spirit of these statements, it is incumbent upon all parties involved to show respect, restraint and responsibility in their efforts to resolve perceived grievances. It is incumbent upon faculty members and students to arrange meetings and conferences with each other in good faith and to communicate decisions promptly to all concerned parties.

Academic Due Process Procedures

Step 1

The student will state the complaint to the instructor(s) involved as soon as possible, but not more than 30 calendar days following knowledge of the complaint.

Step 2

If the grievance is not settled to the satisfaction of the student at Step 1, said student, if he/she so wishes, may request and be granted a meeting with the instructor(s) and the learning center chairperson(s). This meeting must take place within two calendar weeks of the Step 1 meeting.

Step 3

If the grievance is not settled at Step 2, the student will set forth his/her complaint in writing and forward this to the appropriate Institute Dean within one calendar week of the Step 2 meeting. The faculty member(s) and the chairperson(s) will also set forth their positions in writing and forward them to the Dean within one calendar week of the Step 2 meeting. The Dean will arrange a meeting of the Learning Center chairperson(s), the faculty member(s), the student and the Dean. This meeting will be held within two calendar weeks of the Step 2 meeting. At this meeting the student and faculty member may each elect to have present with him/her an advocate of his/her own choice.

Step 4

If the grievance is not resolved at Step 3, the Dean will forward all written materials and his/her recommendation to the Student Conduct and Appeals Committee composed of three students and two faculty. The materials and recommendation must be forwarded within one calendar week of the Step 3 meeting.

The principals involved in the grievance, namely the student and the faculty member involved, shall have the right to review the membership of the Committee and request in writing the replacement of any individual. If there is a request for the replacement of more than one individual by either party, this is to be reviewed by the Vice President for Educational Services who may approve or deny such a request in writing, within one calendar week of the receipt of the request.

One of the members of the Committee shall be designated by the Committee as Chairperson and shall have the responsibility of reporting the recommendations of the Committee to the Vice President for Educational Services in writing. The Committee may hear and receive any testimony of evidence which is relevant and material to the issues. A summary of the proceedings shall be made. The principals may, at their option, be represented at the hearing by an advocate of their choice.

This investigation may include a hearing with all the parties involved. All witnesses may be questioned by the principals or their representatives. Within two calendar weeks after the close of the hearing, the Committee shall submit a written report of its findings and recommendations to the Vice President for Educational Services, together with a record of the proceedings.

Step 5

The Vice President for Educational Services will render a decision within one calendar week of receipt of the materials. The decision from the Vice President for Educational Services is the final step in the academic due process procedures on campus.

The final decision and supportive rationale shall be communicated in writing by the Vice President for Educational Services to the principals, the Institute Dean, the Chairperson and to the Student Conduct and Appeals Committee. This constitutes the final step in the resolution of the grievance within the College.

Questions regarding this process should be directed to the Director of Student Life.

DISCUSSION AND IMPLICATIONS

After reviewing federal and state case law and the opinions of legal scholars and professional associations, it is evident that colleges and universities have to provide their students the opportunity to challenge academic decisions. Formalized grievance procedures which insure due process have become a necessity. And yet, many institutions still do not have

acceptable policies. Why has there been a delay in conforming with legal standards set down by the Fourteenth Amendment and reinforced by legal precedent? Why have a significant number of colleges and universities ignored simple standards of "fair play" in dealing with student academic grievances and left themselves vulnerable to adverse legal actions? The answer, in part, to each of the above question, lies in the strength of three arguments: To give students the right to appeal decision violates faculty academic freedom; To guarantee student academic due process would be costly; and Informal procedures are adequate.

A faculty member's academic freedom has not been violated if he or she acts as a professional in the conduct of their class. If accurate records are kept and fairness is the rule in evaluation, faculty members will be able to successfully defend their academic decisions. If, however, it can be proven that faculty were arbitrary, capricious, or discriminatory, then the faculty member, by his unprofessional behavior, has lost the shield of academic freedom. Students should have the ability to challenge unfair practices. Furthermore, if the faculty member has behaved as a professional, such procedures actually protect his academic freedom.

The cost figure argument has been a straw man. The costs in time and expense (tape recording, transcriptions, etc.) of an internal grievance procedure has been minimal compared to a full scale court case with legal fees and court costs. Student academic grievance procedures have actually saved institutions dollars which might have been spent in court.

Informal procedures have been adequate when the "harm" to the student is minimal, such as receiving a C grade or a B grade instead of a B grade or an A grade. But, when the"harm" has been significant, such as academic

dismissal, probation or failure to graduate, the student must have been able, if he chose, to pursue his case beyond an informal discussion phase. Furthermore, the student has been guaranteed no standards of treatment when he has only "informal" redress. Formal procedures, properly administered, have protected the student, the faculty member, and the College from improper practices. In reviewing written policies, it was found that most institutions have incorporated adequate time for informal resolution of student's grievance prior to the utilization of formal procedures.

In the last analysis, the argument against establishing due process procedures for students are not nearly as strong as the arguments for their establishment. Colleges and universities, the courts have said, will almost always withstand court challenges, if they have allowed students the right to appeal and guaranteed students due process. The mere existence of the appeal opportunity and the due process procedures will discourage most students, and their legal counsel, from challenging academic decisions.

RECOMMENDATIONS

If all institutions should have policies guaranteeing due process, what should these policies contain? On the basis of information contained in this practicum, the following components should be viewed as essential.

1. The policy must be in writing and readily available to all students.
2. In cases where punitive measures are to be taken, the nature of offenses and appropriate penalties should be explicitly defined.
3. Students should be able to have representatives accompany them to all formal proceedings.

4. Appeals Hearing panels should be student-faculty groups, preferably elected, and under no circumstances should "biased" individuals be allowed to sit on the panels.
5. Hearing panels should operate within certain minimum guidelines which guarantee students adequate preparation time, ability to bring witnesses in their defense, to cross-examine other witnesses. access to a full transcript of any formal proceeding, the right to a written decision from the Hearing Panel.

Institutions with written policies which do not have the above should strive to incorporate the recommended guidelines in their due process procedures. Institutions currently without written policies should also try to include all the above in the development of new guidelines.

Students have rights guaranteed by the United States Constitution. Colleges and universities ought not to obstruct these rights but rather help students, through utilization of due process, better understand the nature of constructive, peaceful, and systematic challenge of authority.

Lastly, it is recommended that Brookdale Community College thoroughly discuss the academic due process proposed in this practicum. It is further recommended that a process, be it the proposal made herein or another, be operative for students entering Brookdale in the Fall 1982 term.

1. Amatora vs. Crager, Civil Action No. C-47277, District Court, City and County of Denver, State of Colorado. Judgement and Order (November 27, 1974).

2. American Association of University Professors, et al. "Joint Statement on Rights and Freedoms of Student," in Carnegie Commission. Dissent and Disruption. New York: McGraw-Hill, 1971.

3. American Bar Association. "A Statement on the Rights and Responsibilities of College University Students," in Holmes, Grace W., ed. Law and Discipline on Campus. Ann Arbor, Michigan: Institute of Continuing Legal Education, 1971.

4. American Bar Association Law Student Division Committee on Student Rights and Responsibilities. "Model Code for Student Rights, Responsibilities and Conduct," in Carnegie Commission. Dissent and Disruption. New York: McGraw-Hill, 1971.

5. American Civil Liberties Union "Academic Freedom and Civil Liberties of Students in Colleges and Universities," in Carnegie Commission. Dissent and Disruption. New York: McGraw-Hill, 1971

6. Badgley, Jean, Acting Dean, Institute of Social Sciences and Business, Brookdale Community College. Interview with author, February 10, 1982.

7. Bickel, Alexander M. "Student Demands and Academic Freedom." New Republic Vol. 161 (1969), pp. 15-16.

8. Blackwell, Thomas E. College Law, Washington, D.C.: American Council on Education, 1961.

9. Block vs. Board of Higher Education of the City of New York, Misc. 2d 724, 273NYS 2d 796 (1966).

10. Bluett vs. Board of Trustees of University of Illinois, 10 Ill App 2d 207, 134 N.E. 2d 635, 58 A.L.R. 2d 899 (1956).

11. Blumer, Dennis H. ed. Legal Issues for Post Secondary Education. Washington, DC: American Association of Community and Junior Colleges, 1975.

12. Bolmeier, E. G. Legality of Student Disciplinary Practices. Charlottsville, VA: The Wichie Company, 1976.

13. Brit, Lawrence V. "Some Concepts of Student Academic Freedom," In Dennis, Lawrence E., and Joseph F. Kauffman, eds. The College and the Student, Washington, DC: American Council on Education, 1966.

14. Brookdale Community College. Student Conduct Code. College Regulation 6.3000R.

15. Brubacher, John. The Courts and Higher Education. San Francisco: Jossey-Bass, 1971.

16. Buttney vs. Smiley, 281 (F. Supp.) 280 (1968), p. 95.

17. Byse, Clark. "Procedural Due Process and the College Student: Law and Policy," in Dennis, Lawrence E. and Joseph F. Kauffman, eds. The College and the Student. Washington, DC: American Council on Education, 1966.

18. Byse, Clark. "The University and Due Process: A Somewhat Different View," AAUP Bulletin, Vol. 54 (1968), pp. 143-148.

19. Canavan, Francis. "The Process That Is Due," Journal of Higher Education, Vol. 44 (1973), pp. 114-123.

20. Carnegie Commission. Dissent and Disruption. New York: McGraw-Hill, 1971.

21. Carnegie Commission. Reform on Campus. New York: McGraw-Hill, 1972.

22. Chambers, M. M. The Colleges and the Courts. Danville, Ill.: Interstate, 1972.

23. "Code of Teaching Responsibility and Statement of Rights of Students to Receive Instruction from Michigan State University," in Carnegie Commission. Reform on Campus. New York: McGraw-Hill, 1972.

24. Connelly vs. University of Vermont and State Agricultural College, 244 F Supp. 156 (USDC, D. Vermont, 1965).

25. deBruin, Hendrick C. "The College Student and Due Process," Improving College and University Teaching, Vol. 22 (1974), pp. 13-15.

26. deCinque, Gregory, Director of Student Life, Brookdale Community College. Interview with the author, February 17, 1982.

27. DeMarco vs. University of Health Sciences,Chicago Medical School 352 NE 2d 356 (Ill. App 1976) p. 92.

28. Dennis, Lawrence E. and Joseph F. Kauffman, eds. The College and the Student. Washington, DC: American Council on Education, 1966.

29. Dixon vs. Alabama State Board of Education, 294 F 2nd 150 (5th Cir 1961). p. 10.

30. Donahue, Rita, Dean of Applied Humanities Institute, Brookdale Community College. February 10, 1982

31. Darsey vs. Bale, 521 S.W. ed. 76. Kentucky Court of Appeals, 1975.

32. El-Khawas, Elaine H. "Consumerism as An Emerging Issue for Post-seondary Education," Educational Record, Vol. 56 (1975), pp. 126-131.

33. El-Khawas. "Putting the Student Consumer Issue in Perspective," Educational Record, Vol. 58 (1977), pp. 169-179.

34. Esteban vs. Central Missouri State College, 290 F. Supp. 622 (W.D.Mo. 1968), 415 F2d. 1077 (8th Cir. 1969).

35. Farer, Tom J. "The Array of Sanctions," in Holmes, Grade W., ed. Law and Discipline on Campus. Ann Arbor, Michigan: Institute for Continuing Legal Education, 1971.

36. Fleming Robin. "Introductory Remarks," in Holmes, Grace W., ed. Law and Discipline on Campus. Ann Arbor, Michigan: Institute for Continuing Legal Education, 1971.

37. Frankel, Charles. "Rights and Responsibilities in the Student-College Relationship," in Dennis, Lawrence E. and Joseph F. Kauffman, eds., The College and the Student. Washington, DC: American Council on Education, 1966.

38. Frey, John, Dean of Natural and Applied Science Institute, Brookdale Community College. Interview with the author, February 11, 1982.

39. Gaspar vs. Brutan, 513 F Supp. 3d 843, (USDC App, 10th Cir. 1975).

40. Goldman, Alvin L. "The University and the Liberty of Its Students ... A Fiduciary Theory," 54 Kentucky Law Journal 643, 647 (1969).

41. Goss vs. Lopez, 419 U.S. 565, 95 S.Ct. 729, 42L.Ed.2d 725 (1975).

42. Greenhill vs. Bailey, 519 F.2d 5(8th Cir. 1975).

43. Healy vs. Larsson, 323 NYS 2d 625, Supreme Court, Special Term, Schenectady County, 1971.

44. Hill vs. Trustees of Indiana University, 537 F 2d 248 (7th Cir. 1976).

45. Hollander, Patricia A. Legal Handbook for Educators. Boulder, Co: Westview Press, 1978.

46. Holmes, Grace W., ed. Law and Discipline on Campus. Ann Arbor, Michigan: Institute for Continuing Legal Education, 1971.

47. Hook, Sidney. Academic Freedom and Academic Anarchy. New York: Delta, 1969.

48. Horowitz vs. Board of Curators of University of Missouri, 538 F 2d 1317 (8th Cir., 1976)

49. Jackson, Barry L. and Robert L. Richardson, "Legal Issues in Higher Education: A Look Toward the Future," Journal of College Student Personnel, Bol. 16 (1975), pp. 514-519.

50. Joughin, Louis,ed. Academic Freedom and Tenure. Madison, Wisc.: University of Wisconsin Press, 1967.

51. Kaplin, William A. The Law of Higher Education. San Francisco: Jossep-Bass, 1978.

52. Kemerer, Frank, Professor of Law and Education, North Texas State University. Letter to the author, September 26,1978.

53. Keyes vs. Sawyer, 353 F Supp. 910 (244, 1970).

54. Knight vs. State Board of Education, 200 F Supp 174 (M.D. Tenn, 1961).

55. Levine, Alan H. The Rights of Students. New York: Avon, 1973

56. Lippe, Richard. "The Student in Court," in Holmes, Grace W., ed. Law and Discipline on Campus. Ann Arbor, Michigan: Institute for Continuing Legal Education, 1971

57. Lyons vs. Salve Regina College, 422 F Supp. 1354, United States District Court, D. Rhode Island, 1976.

58. McDonald vs. Board of Trustees of University of Illinois, 375 F Supp. 95 USDC, Norther District Illinois, E.D. 1974.

59. Mancuso, John H. "Legal Rights to Reasonable Rules, Fair Grades, and Quality Courses," New Directions for High Education, Vol. 13 (1976), pp. 75-88.

60. Militana vs. University of Miami, 236 S. 2nd. 162. District Court of Appeals of Florida, 3rd.D., 1970.

61. Mills, Joseph L. ed. The School Law Newsletter. 6 (1976), p. 209

62. Moye, Alfred. "Meeting Student Demands: An Example of Voluntary Response," Educational Record, Vol. 58 (1977), pp. 191-200

63. Mustill vs. Rose, 211 S.2d. 498, Supreme Court of Alabama, 1968.

64. Nussbaum, Michael. Student Legal Rights. New York: Harper and Row, 1970.

65. Perkins, James E. "The University and Due Process," in American Council on Education. Chronicle of ACE. Washington, DC: American Council on Education, 1967.

66. In re Press, 45 L.W.2237 (N.Y. Cup Ct. N.Y. County) Special Term Part I: Oct. 27, 1976).

67. Ratliff, Richard C. Constitutional Rights of College Students. Metuchen, New Jersey: The Scarecrow Press, 1972.

68. Roberts vs. Knowlton, 377 F Supp. 1381, USDC, Southern District, New York, 1974.

69. Seavey, Warren. "Dismissal of Students," 70 Harvard Law Review 1406 (1957).

70. Shuffer vs. Trustees of California State University and College, 136 Cal Rptr. 527 Court of Appeals, Second District Division 4, 1977.

71. Sofair vs. State University of New York, Upstate Medical Center College of Medicine. Relihan, Walter. Counsel, State University of New York. Letter to author. October 1, 1978.

72. Schwartz vs. Bank Street College of Education, 381 N.Y.S. 2d. 282 (Sup Ct. App. Div. 1976).

73. Tanner vs. Board of Trustees of University of Illinois, 363 NE 2d 208, Appellate Court of Illinois, Fourth District, 1977.

74. Tice, Terrence. Student Rights, Decisionmaking and the Law. Washington, DC: American Association of Higher Education, 1976.

75. Trammuttola, Joseph L., Dr. and Robert Laudicina. A Legal Perspective for Student Personnel Administrators, Springfield, Ill. Charles C. Thomas, 1974.

76. United States Constitution, Fourteenth Amendment.

77. United States District Court for the Western District of Missouri. "General Order on Judicial Standards of Procedure and Substance," in Holmes, Grace W., e. Law and Discipline on Campus. Ann Arbor, Michigan: Institute for Continuing Legal Education, 1971.

78. University of California. "Interim Report of the Statewide Academic Council," in Carnegie Commission. Reform on Campus. New York: McGraw-Hill, 1972.

79. Van Alstyne, William W. "Procedural Due Process and State University Students." 10 UCLA Law Review 368 (1963).

80. Van den Haag, Ernest. "Academic Freedom in the United States," in Boade, Hans W., ed. Academic Freedom. New York: Ociana, 1964.

81. Wermuth vs. Berstein and Board of Education of the Township of Livingston, Essex County (Decision of the New Jersey Commission of Education, 121 (1965).

82. Williamson, E. G., and John L. Covan, "Academic Freedom for Students: Issues and Guideline," in Dennis, Lawrence E. and Joseph F. Kauffman, eds. The College and the Student. Washington, DC: American Council on Education, 1966.

83. Wright, Charles Alan, 22 Vanderbilt Law Review (1027, 91969).

84. Young, D. Parder and Donald D. Gehring. The College Student and the Courts. Ashevitle, NC: College Administration Publications, 1973.

APPENDIX A

BROOKDALE COMMUNITY COLLEGE

COLLEGE REGULATION

ON STUDENT CONDUCT

BROOKDALE COMMUNITY COLLEGE

COLLEGE REGULATION

6.3000 R I. TITLE OF REGULATION

Student Conduct Code

II. OBJECTIVE OF REGULATION

To provide for the maintenance of the common welfare of the students of the College and the objective stated in the philosophical platform of the College.

III. AUTHORITY

By-Laws of the Board of Trustees, Section 1.3034 (m)

IV. REGULATION STATEMENT

1. Definition of a Student

For the purpose of this code, a student is defined as one who is currently enrolled at the College.

2. Purpose and Scope of the Conduct Code

a. The following statements comprising the Student Conduct Code are adopted for the purpose of providing a precise set of expectations and at the same time offering the assurance that all students will be accorded fair and objective treatment when violations occur.

b. These standards of conduct will apply to students engaging in activities on the campus, or at any of the Brookdale College off-campus centers, as well as to student organizations sponsoring approved off-campus functions.

c. When a student has been convicted of the violation of a law in the community, state, or nation, the College will not request special consideration for that individual because of his status as a student. The College will cooperate fully, however, with the law enforcement agencies and with other agencies in any appropriate program for the rehabilitation of the student.

3. Standards of Conduct

a. Student conduct which interfers with the philosophical platform of the College is not acceptable.

b. An individual who enrolls at the College can rightfully expect that the faculty and administrators will exercise the authority of the College to regulate student conduct whenever the educational process, the health and welfare of the student body as a whole, and the property of the College are judged to be jeopardized by the action of an individual student or group of students. Specifically, the following acts are prohibited:

1. Use of or threat to use physical force or violence to harrass, abuse, intimidate, coerce, or injure another, or to cause damage to or loss of property; or

2. Use of language or actions intended to incite the use of physical force or violence by others or which denigrates another party; or

3. Persisting in making or causing to be made unreasonable, excessive, or tumultuous noise; or

4. Obstruction or restraining the lawful movement of another or causing a campus disorder by obstructing or restraining his lawful participation in authorized activities and events, including, without limitation, regular and special curricular activities, co-curricular activities, and employment interviews; or

5. Engaging in any other reckless, tumultuous, or unlawful act or course of conduct; or

6. Possession of, carrying, or using firearms, including rifles, shotguns, and pistols, ammunition, explosives, or other dangerous weapons, instruments, or substances in or on College premises, or functions sponsored by the College; or

7. Illegal possession of narcotic drugs; or

8. Engaging in any form of gambling while on College premises or functions sponsored by the College; or

9. Cheating or plagiarism in connection with an academic program; or

10. Misrepresenting of oneself or of an organization to be an agent of the College; or

11. Theft of or nonaccidental damage to College property or property in the possession of or owned by a member of the College community; or

12. Any other violation of existing local, state, or federal law as well as any College policy and regulation.

4. Enforcement

a. Initial Action

Any student or group of students violating the Student Conduct Code by committing a prohibited act or acts as aforesaid will be referred to the Director of Student Life and Activities or the Director of a College off-campus center as the case may be for disciplinary measures in accordance with the provisions hereof.

b. Lesser Offenses

In the case of all lesser offenses deemed by the Director of Student Life and Activities or the Director of a College off-campus center, respectively, not to constitute acts which would result in suspension or expulsion of the student or students, the Director of Student Life and Activities or the Director of the College off-campus center, respectively, may impose disciplinary action as follows:

1. Verbal reprimands

2. Verbal reprimands confirmed in writing

a. Verbal reprimands and confirmation of verbal reprimands will be made by the office of the Director of Student Life and Activities for on-campus offenses. When offenses occur at a College off-campus center, verbal reprimands and written confirmation will be made by the Directors of the College off-campus centers, respectively, and copies of written confirmation filed with the Director of Student Life and Activities.

c. Other Offenses

In any case in which the violation is of such a nature that, in the opinion of the Director of Student Life and Activities, suspension or expulsion could be imposed therefor, the Director of Student Life and Activities will not impose disciplinary action except upon the following procedures:

1. A student conduct committee will be appointed to hear all cases which could result in suspension or expulsion. This committee will be composed of three students and two representatives of the College staff.

2. In such cases the Director of Student Life and Activities, acting as a nonvoting member of the student conduct committee, will notify the student in writing of the time and place of a meeting of the student conduct committee, which said notice will advise the student of the charges against him, his right to cross-examine witnesses against him, his right to produce witnesses in his behalf, and to select counsel of his own choosing.

3. The Director of Student Life and Activities at the meeting of said committee will present all charges against the student.

4. The student conduct committee will proceed at such meeting to hear the charges against such student, to hear witnesses against and for the student, and, in general, will conduct a hearing consistent with the principles of due process.

5. Upon the conclusion of such hearing and after due deliberation, the student conduct committee will make a recommendation to the Director of Student Life and Activities in the matter.

6. The Director of Student Life and Activities will notify the student within 24 hours of the determination made.

d. Appeals

1. Any student may appeal a decision of the student conduct committee by notice in writing filed with the Vice-President for Educational Services within 5 days after notice of the student conduct committee decision.

2. The Vice-President for Educational Services, upon the filing of such appeal, will review the proceeding in the matter and may either (a) affirm the decision of the student conduct committee, or (b) convene an appeal committee.

3. In the event the Vice-President for Educational Services will affirm the decision of the student conduct committee, the Vice-President for Educational Services will advise the student in writing within 24 hours of the decision and will also advise the student of his right of further appeal to the office of the President of the College.

4. In the event that the Vice-President for Educational Services, on any appeal filed with him, will determine to convene an appeal committee, the following procedure will prevail:

   a. The Vice-President for Educational Services will appoint an appeal committee consisting of three students and two representatives of the College staff.

   b. The Vice-President for Educational Services will convene such committee, give notice to the student appellant of the time and place of the meeting of said committee to hear the appeal, and will preside over the hearing.

   c. The appeal committee, after hearing the matter, may take action: (1) affirming the decision of the student conduct committee, or (2) render a new decision.

   d. The Vice-President for Educational Services will advise the student in writing, within 24 hours, of the decision of the appeal committee, which said notice will also advise the student of his right of further appeal to the office of the College President.

e. Suspension

1. Suspension of a student will be invoked when more serious violations of the disciplinary code occur or when the conditions of disciplinary probation are disregarded. Suspension is carried out only on the basis of the recommendation of the student conduct committee and with the final approval of the President. Suspension is applied for a given period of time, and the term is specified to the student. A student suspended from College forfeits all rights and privileges of a student, including all nonpublic College sponsored functions. All suspension actions will be noted in the student's record.

2. Any student may be summarily suspended by the Director of Student Life and Activities or a College off-campus center Director for a period not to exceed 5 College days during which the student conduct committee will convene. In the event of any appeal from the student conduct committee decision, the Director of Student Life and Activities may suspend a student or continue any previous suspension until the disposition of the appeal.

f. Expulsion

Expulsion will be invoked when extreme violations of the disciplinary code occur or when suspensions have been issued to a student and may result in the severance of a student from the College. Thereafter, the student is subject to application for readmission and review by the Director of Student Life and Activities.

g. Presidential Power

Any suspension or any expulsion imposed will be at all times subject to the approval of the President of the College. Nothing in these regulations will be deemed to limit the final authority of the President of the College in all matters relating to violations of the Student Conduct Code and the imposition of discipline therefor, whether by way of probation, suspension, or expulsion.

V. RESPONSIBILITY FOR IMPLEMENTATION

Vice-President for Educational Services

Approved: President
12/17/69

Effective: 12/17/69

Revised: 2/14/77

ERIC Clearinghouse for Junior Colleges
8118 Math-Sciences Building
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SEP 2 1983